

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NOS. 543/90 TO 640/90

AND

FIRST APPEALS NOS. 659/88 TO 663/88, 673/88,
676/88, 679/88 TO 682/88, 684/88, 685/88 TO 687/88,
702/88, 708/88, 709/88, 712/88 TO 714/88, 717/88, 718/88
720/88, 726/88, 731/88, 732/88, 737/88, 738/88, 740/88,
741/88, 745/88 TO 747/88, 753/88 TO 766/88, 771/88 TO
813/88, 816/88 TO 846/88, 848/88, 850/88 TO 852/88,
854/88 TO 864/88, 867/88 TO 869/88, 876/88, 877/88,
878/88 TO 881/88, 883/88, 886/88 TO 888/88, 892/88 TO
894/88, 896/88 TO 902/88, 905/88 TO 907/88, 910/88, 913/88,
914/88, 917/88, 918/88, 921/88 TO 924/88, 926/88, 929/88
931/88, 934/88 TO 936/88, 938/88, 939/88, 942/88, 950/88
TO 953/88, 956/88 TO 967/88, 969/88 TO 971/88

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

KOTVAL KANAJI MATHURJI

Appearance:

FIRST APPEAL NOS. 543/90 TO 640/90

MR H.B.SHAH, FOR APPELLANTS.

MR.P.G.DESAI, G.P. for respondent.

FIRST APPEAL NOS.659/88 to 663/88

MR.P.G.DESAI,GOVERNMENT PLEADER for appellant.

MR.P.M.THAKKAR, for respondent No.1.

FIRST APPPEAL NOS.673/88, 676/88,679/88 to 682/88,
684/88 to 687/88, 708/88, 731/88, 732/88, 737/88,
738/88, 740/88, 741/88, 745/88 to 747/88, 753/88 to
766/88, 848/88, 854/88 to 864/88, 883/88,886/88 to
888/88 892/88 to 902/88, 905/88 to 908/88, 910/88,913/88
917/88, 922/88, 926/88, 929/88, 931/88, 934/88 to
936/88, 942/88,950/88 to 953/88:

MR.PG DESAI, G.P. for appellant.

MR J.P.GADHVI,for respondent No.1

FIRST APPEAL NO.676/88 :

MR.PG DESAI,G.P.for appellant.

MR KV GADHIA, for respondent No.1/1

FIRST APPEAL NOS.702/88, 816/88 to 846/88, 850/88 to
852/88, 867/88 to 874/88, 918/88, 921/88, 923/88, 956/88
to 967/88, 969/88 to 971/88

MR PG DESAI, G.P. for appellant

MR H.B.SHAH, for respondent No.1

FIRST APPEL NOS.717/88,718/88, 720/88, 848/88, 854/88,
883/88, 892/88 TO 902/88

MR PG DESAI, G.P. for appellant

MR V.P.THAKKAR, for respondent No.1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE M.H.KADRI

Date of decision: 23-9-97.

C.A.V. JUDGEMENT

(Per Kadri, J.)

1. The State of Gujarat has filed First Appeals under Section 54 of the Land Acquisition Act 1894, (to be referred to as " the Act " for short), read with Section 96 of the Code of Civil Procedure, challenging common judgment and award dated April 30, 1986, passed by the learned Assistant Judge, Sabarkantha, at Himatnagar, in the group of Land Reference Cases Nos. 118/84 to 433/84. A comprehensive statement showing details of Land Reference Cases numbers, First Appeal numbers along with amounts awarded by the Land Acquisition Officer and the Reference Court is tabulated as under :

SR. NO.	APPEAL NO.	REF/ LAQ NO.	NAME OF PARTY	AMOUNT AWARDED BY LAQ OFFICER	AMOUNT AWARDED BY DIST.COURT
1	2	3	4	5	6
	1988	1984			
1	659	118	KOTWAL WAGHJI R.	13967	21032
2	660	119	KOTWAL WAGHAJI R.	12357	22642
3	661	120	KOTWAL MOHANJI M.	13885	21246
4	662	121	TELIQAT SURMAJI K.	12625	23937
5	663	122	KOTWAL SALAJI M.	18462	23641
6	673	132	KHAUT DHULAJI P.	9634	25830
7	676	135	GHANCHI USMANBHAI K. (D/D) KADARBHAI-HEIR	28663	22969
8	679	138	GANCHI ABDULBHAI K.	36269	29019
9	680	139	DARJI ISHWARBHAI S.	15566	26757
10	681	140	DARJI RAMANBHAI K.	15714	29509
11	682	141	BHATT JAYANTILAL G.	36827	51162
12	684	143	PANCHAL SANTOKBEN R.	5830	27799
13	685	144	PRAJAPATI SHIVABHAI D.	20689	34633
14	686	145	BHATT ARVINDKUMAR C.	20973	28436

15	687	146	PRAJAPATI PUNJABHAI S.	18539	30600
16	702	161	BHANGI BHIKHABHAI S.	8241	20584
17	708	167	PANCHAL VASANJI S.	20118	41094
18	709	168	PANCHAL BHIKHABHAI P.	14671	25801
19	712	171	PANCHAL SHIVABHAI M.	18192	21669
20	713	172	PANCHAL MANILAL M.	18491	26956
21	714	173	PANCHAL NARSINHBHAI L.	14540	28622
22	717	176	PANCHAL KODRIBEN K.	13393	26278
23	718	177	PANCHAL MANIBHAI R.	24119	21046

24	720	179	PANCHAL MAGANBHAI R. & ANR.	32326	22884
25	726	185	BHATT MINABEN K.	37910	46462
26	731	190	PANCHAL SOMIBEN M.	21279	20067
27	732	191	PANCHAL KODARBHAI N.	14097	33796
28	737	196	KODRIBEN D/O CHHAGANBHAI	18199	26715
29	738	197	RAT BHALABHAI S.	12629	20716
30	740	199	PANCHAL KESHAVALAL M.	14762	26369
31	741	200	BHATT RAMANLAL G.	22185	32338
32	745	204	RAT HIRABHAI S.	219517	33101
33	746	205	RAT MAGANBHAI JETHABHAI H.	22889	37212
34	747	206	VORA HIMATBHAI A.	10405	38860

35	753	212	SHAH KHEMCHAND P.	30002	34865
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36	754	213	SHAH HIRALAL H.	44187	43284
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37	755	214	SHAH DAMODAR P.	15343	20688
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38	756	215	PUROHIT AMRITLAL N.	20671	31434
			& ORS.		
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39	757	216	SHAH GOVINDLAL S.	29672	18715
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40	758	217	SHAH JAYANTILAL S.	31549	21209
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41	759	218	SHAH HASMUKHLAL S.	18283	31745
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42	760	219	SHAH NATVERLAL J.	29308	34712
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43	761	220	SHAH NATVERLAL J.	25098	48750
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44	762	221	RAT HIRABHAI K.	13932	13695
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45	763	222	RAT DAHYABHAI K.	18267	19682
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46	764	223	RAT NATHABHAI P.	21225	14200
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47	765	224	RANA NANABHAI P.	18947	15422
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48	766	225	VALAND KALABHAI N.	3538	10724
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49	771	230	SHAH ASHOKKUMAR K.	16749	32053
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50	772	231	SHAH ASHOKKUMAR K.	16010	35328
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51	773	232	SHAH ASHOKKUMAR K.	3245	21419
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52	774	233	SHAH RANJALAL A.	23803	38312
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53	775	234	PATEL ROHITKUMAR K.	18606	12144
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54	776	235	PATEL SAMBHUBHAI S.	24541	15558
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55	777	236	PRAJAPATI RUKHIBEN	149517	20478
			WD/O BHURABHAI		
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56	778	237	PATEL BHALABHAI K.	25695	25071
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57	779	238	PATEL SOMABHAI S.	14791	54400

58	780	239	PATEL SOMABHAI S.	7785	11278
59	781	240	PATEL KISHORBHAI K.	18950	43787
60	782	241	PATEL SOMABHAI M.	14153	18061
61	783	242	PATEL PUNJABHAI G.	30117	42243
62	784	243	PATEL NATHABHAI L.	13967	16320
63	785	244	PATEL LALABHAI K.& ANR.	19019	49958
64	786	245	PATEL VIRABHAI K.	12322	24807
65	787	246	PATEL DAHYABHAI K.	2710	13160
66	788	247	PATEL MANORBHAI N.	20875	45802
67	789	248	BARIA JAGAJI KOYAJI	7343	14004
68	790	249	BARIA JAGAJI KOYAJI	9491	11664
69	791	250	PRAJAPATI BECHARBHAI K.	31448	5443
70	792	251	PATEL REVABHAI B.	14111	50633
71	793	252	PATEL BHIKHABHAI R.	16004	33761
72	794	253	PATEL LADUBEN V.	44856	63293
73	795	254	PATEL MORIBEN V.	38926	7927
74	796	255	PRAJAPATI DHULABHAI J.	13012	58008
75	797	256	PRAJAPATI JIVABHAI K.	14018	23167
76	798	257	JAISHWAL RAMANBHAI K.	2942	5888
77	799	258	PRAJAPATI HIRABHAI J.	13995	29859
78	800	259	PRAJAPATI KODARBHAI R.	24040	17966

79	801	260	PRAJAPATI KOYABHAI R.	14887	38546
80	802	261	PRAJAPATI PRABHUDAS R.	14015	30816

	81	803	262	PATEL MAVABHAI L.	33223	17838
	82	804	263	PATEL JAGABHAI M.	29266	19701
	83	805	264	PATEL MALABHAI H.& ORS.	21981	27795
	84	806	265	PATEL MALABHAI H.& ORS.	21294	32396
	85	812	271	PATEL KOYABHAI D.	416	8377
	86	813	272	PATEL PUNJABHAI G.	416	8377
	87	816	275	PATEL JIVIBEN S. & ORS.	21143	35023
	88	817	276	PATEL MAGANBHAI L.	37512	104291
	89	818	277	PATEL JIVIBEN S. & ORS.	4422	4511
	90	819	278	KHAT NATHAJI S.	5153	10717
	91	820	279	KHAT MALAJI S.	12567	30179
	92	821	280	KHAT DAYAJI S.	12073	17277
	93	822	281	KHAT BAPUJI S.	8676	36163
	94	823	282	BAMANIA GALAJI M.	20706	42039
	95	824	283	BAMANIA PUNJABHAI B.	11498	20579
	96	825	284	BAMANIA PREMAJI S.	9321	15939
	97	826	285	BAMANIA HATHIJI S.	8054	20685
	98	827	286	NANABHAI RUPABHAI	29900	50414
	99	828	287	PATEL KODARBHAI V.	16187	27270
	100	829	288	PATEL DAYABHAI V.	21308	36191
	101	830	289	PATEL KODARBHAI V.	1948	3441
	102	831	290	PATEL SANABHAI S.	5631	8767
	103	832	291	PATEL BHALABHAI K.	4062	9914
	104	833	292	PATEL S.S.	85	1714
	105	834	293	PATEL SANABHAI S.	368	7408

106	835	294	PATEL MANHARBHAI S.	27200	28201
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107	836	295	PATEL DAHYABHAI M.	4842	12690
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108	837	296	PATEL SOMABHAI S.	49916	4207
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109	838	297	PATEL SOMABHAI S.	186	2441
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110	839	298	SHAH JAYANTILAL P.	29291	19315
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111	840	299	SHAH ASHOKKUMAR K.	33743	27089
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112	841	300	SHAH KANAILAL M.	14665	2600
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113	842	301	SHAH BHOGILAL M.	15571	102649
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114	843	302	SHAH HARIVALLABHDAS S.	2218	37815
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115	844	303	SHAH H.S.	23595	13303
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116	845	304	SHAH JAYANTILAL P.	43804	85532
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117	846	305	SHAH KANAILAL M.	68312	77204
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118	848	307	SHAH KANAILAL M.	5670	11840
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119	850	309	SHAH KANAILAL M.	30960	37086
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120	851	310	CHAUHAN NAHARSINH A.	23738	41006
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121	852	311	SHAH K.M.	143	1878
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122	854	313	SHAH CHHOTALAL H.	23306	60998
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123	855	315	CHAUHAN NANSINH K.	21794	30338
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124	856	316	CHAUHAN MAGANSING H.	23552	27051
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125	857	317	CHAUHAN KASHIBA WD/O JAWANSING	15723	32856
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126	858	318	RAT MAGANLAL J.	70944	47361
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127	859	319	SHAH D.C.	49441	94542
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128	860	320	SHAH VITHALDAS H.	43168	76250
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129	861	321	SHAH K.C.	33148	26516
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130	862	322	SHAH K.V.	24359	31162
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131	863	323	VORA SABIRBHAI H.	15574	88758
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132	864	324	SHAH M.P.	15569	34593
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133	867	327	SHAH S.J.	20479	20662
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134	868	328	SHAH M.B.	15872	49771
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135	869	329	SHAH M.V.	18186	58446
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136	876	336	PANDYA KESHAVAL L.	13983	35352
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137	878	338	PANCHAL MANHARLAL L.	13976	33450
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138	879	339	PANCHAL SABURBHAI R.	5800	29803
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139	880	340	PANCHAL KANUBHAI M.	15448	36540
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140	881	341	PANCHAL CHANDUBHAI C.	15776	32460
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141	883	343	PANCHAL KESHAVAL L.	10212	21199
			& ANR.		
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142	886	346	SURTI USMANBHAI G.	46085	133685
			& ANR.		
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143	887	347	SONI JAYANTILAL B.	25375	25782
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144	888	348	PANCHAL ARKHABHAI S.	15420	28191
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145	892	352	PANCHAL KOYABHAI K.	20034	27097
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146	893	353	PANCHAL NARSIBHAI K.	17951	34228
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147	894	354	PANCHAL AMBALAL H.	32773	25620
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148	896	357	PANCHAL DAHIBEN	14013	40698
			WD/O GOVINDBHAI		
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149	897	358	PANCHAL BHIKHABHAI	28079	37015
			PRABHUDAS & ANR.		
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150	898	359	PANCHAL KODARBHAI K.	22155	32271
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151	899	360	SHAH CHIMANLAL P.	23555	45975
				174	
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152	900	361	BHATT RAMSHANKER V.	22151	27663
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153	901	362	SONI VADILAL S.	9550	17871
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154	902	363	BHATT VISHNUBHAI H.	34004	28658
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155	905	366	CHAUHAN NANSHI P.	24028	23447
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156	906	367	SHAH SHIVALAL M.	30431	50694
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157	907	368	SHAH PITAMBARDAS L.	46035	65247
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158	910	371	BHATT KANTILAL K.	15425	25037
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159	913	374	BHATT J.K.	14957	20471
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160	914	375	PRAJAPATI MANDHIBEN L.	17617	36915
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161	917	378	JOSHI G.N.	20043	26212
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162	918	379	DARJI S.M.	20811	26915
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163	920	381	DARJI H.M.	16979	10737
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164	921	382	DARJI J.K.	20450	28768
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165	922	383	DARJI Y.K.	20286	25485
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166	923	384	DARJI M.S.	16994	23487
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167	924	385	DARJI S.S.	11661	28820
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168	926	387	PRAJAPATI S.D.	5978	22139
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169	929	390	PRAJAPATI N.D.	10158	26708
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170	931	392	DARJI CHANCHALBEN S.	13995	26663
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171	934	395	CHAUHAN MOTIBA J.	24480	32968
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172	935	396	CHAUHAN SAJJANBA N.	14066	41463

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173	936	397	CHAUHAN S.K.		22366	39200	
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174	938	399	MAKWANA B.H.		12764	32412	
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175	939	400	KOTWAL B.C.		9575	21162	
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176	942	403	JUBIDABEN		14162	24075	
			WD/O IBRAHIMBHAI				
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177	950	411	KOTWAL S.N.		9514	27735	
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178	951	412	KOTWAL L.N.		12548	20530	
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179	952	413	PRAJAPATI B.L.		12145	24513	
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180	953	414	PRAJAPATI P.P.		19642	34368	
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181	956	417	SHAH P.L.		29903	30148	
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182	957	418	SHAH P.L.		32518	72392	
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183	958	419	PATEL K.D.		19672	35673	
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184	959	420	SHAH G.H.		35289	35240	
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185	960	421	SHAH M.H.		38383	38402	
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186	961	422	SHAH G.V.		77968	51322	
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187	962	423	KAMLABEN WD/O		28929	53188	
			LILACHAND & ORS.				
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188	963	424	SHAH J.K.		25052	55215	
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189	964	425	SHAH H.C.		95051	71377	
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190	965	426	SHAH M.H.		7451	12361	
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191	966	427	SHAH M.H.		40470	45050	
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192	967	428	SHAH M.H.		29602	70328	
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193	969	431	SHAH B.M.		27346	25867	
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194	970	432	SHAH B.M.		30011	31903	
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|195 | 971 | 433 |SHAH H.S. | 24674 | 19399 |
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The said common judgment and award of the learned Assistant Judge, Sabarkantha at Himatnagar in the above group of Land Reference Cases is also challenged by the appellants who are the original claimants (to be referred to as the claimants hereinafter) in the above group of Land Reference Cases by filing First Appeal Nos. 543/90 to 640/90 which are shown in the statement as under :

STATEMENT SHOWING THE CLAIMANTS' CROSS APPEALS.

SR. NO.	CLAIM-ANTS' APPEAL NO.	LAND REF. NO. YEAR	NAMES OF THE PARTIES APPELLANTS	GOVT. APPEAL NO. 1988	APPEAL CLAIM	AMOUNT AWARDED BY DIST. COURT
1	2	3	4	5	6	7
1	543	146	PRAJAPATI PUNJABHAI SANKARBHAI	687	30600	30600
2	544	216	GOVIND SHANKAR	757	18715	18715
3	545	217	SHAH JAYANTILAL SHANKARLAL	758	21209	21209

4	546	218	SHAH HASMUKH SHANKAR	759	31745	31745
5	547	221	RAT HIRA KODAR	762	13695	13695
6	548	222	RAT DAHYA KODAR	763	19682	19682
7	549	223	RAT NATHA PUNJA	764	14200	14200
8	550	224	RAT NAHNA PUNJA	765	15422	15422
9	551	225	VALA KALA NANA	766	10724	10724

34	576	257	JAIJIWALI RAMAN KOLDAS	798	5888	5888
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35	577	258	PRAJAPATI HIRA JIVA	799	29859	29859
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36	578	259	PRAJAPATI KODAR RANCHHOD	800	17966	17966
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37	579	260	PRAJAPATI ROHYABHAI RAMABHAI	801	38546	38546
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38	580	261	PRABHUBHAI RANCHHOD	802	30816	30816
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39	581	262	PATEL MAVA LALA	803	17838	17838
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40	582	263	PATEL JAGA MAVA	804	19701	19701
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41	583	264	PATEL VALA HIRA	805	27795	27795
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42	584	265	PATEL LALA HIRABHAI	806	32396	32396
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43	585	271	PATEL KOYA JHARAMBHAI	812	8377	8377
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44	586	272	PATEL PUNJA GOGABHAI	813	8377	8377
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45	587	275	PATEL JIVIBEN SHIVABHAI	816	35023	35023
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46	588	276	PATEL MAGAN LALA	817	104291	104291
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47	589	277	PATEL JIVIBEN SHIVABHAI	818	4511	4511
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48	590	278	KHANT NATHA SANKLABHAI	819	10717	10717
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49	591	279	KHANT VALA SANKLABHAI	820	30179	30179
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50	592	280	KHANT DAHYAJI SANKLAJI	821	17277	17277
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51	593	281	KHANT BAPUJI SANKLAJI	822	36163	36163
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52	594	282	GULUJI MULUJI BAMMIYA	823	42039	42039
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53	595	283	PURAJI BHALAJI BAMMIYA	824	20579	20579
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54	596	284	BHEMANJI SAVAJI	825	15939	15939
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55	597	285	NATHIJI VIRAJI	826	20685	20685
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56	598	286	NANA RUPA	827	50414	50414
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57	599	287	KODAR VALABHAJI	828	27270	27270
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58	600	288	DUNYA LALA	829	36191	36191
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59	601	289	KADARBHAI LALLUBHAI	830	3441	3441

60	602	290	SUMA SAKLABHAI PATEL	831	8767	8767
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61	603	291	PATEL BHALA KANA	832	9914	9914
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62	604	292	PATEL SOMAN SANKLY	833	1714	1714
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63	605	293	PATEL MANOR SANKLA	834	7408	7408
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64	606	294	PATEL MANHAR SANKLA	835	28201	28201
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65	607	295	PATEL DHULA MUNO	836	12690	12690
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66	608	296	PATEL SOMA SANKLY	837	4207	4207
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67	609	297	PATEL SOMA SANKER	838	2441	2441
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68	610	298	SHAH JAYANTILAL PUNJALAL	839	19315	19315
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69	611	300	PATEL KANAIIYALAL MOHAN	841	2600	2600
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70	612	301	PATEL BHAGI MAGAN	842	102649	102649
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71	613	302	HARI VALLABH SHANKERLAL	843	37815	37815
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72	614	303	HARI VALLABH SHANKERLAL	844	13303	13303
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73	615	305	KANAIIYALAL MOHAN	846	77204	77204
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74	616	307	KANAIIYALAL MOHAN	848	11840	11840
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75	617	309	KANAIIYALAL MOHAN	850	37086	37086
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76	618	311	KANAIIYALAL MOHAN	852	1878	1878
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77	619	314	SHAH SHANKERLAL JETHALAL	No.appeal filed by Govt		
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78	620	318	VALAND SHANKER MAGAN	858	32586	32586
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79	621	321	KANJI CHHABILDAS SHAH	861	26516	26516
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80	622	322	KANTILAL KALIDAS SHAH	862	31162	31162
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81	623	325	SHAH KANAIIYALAL MOHAN	861	26516	26516
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82	624	327	SHAH SHANKERLAL JETHA	867	20662	20662

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83	625	367	SHAH SHIVLAL MANSUKH	906	50694	50694
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84	626	368	SHAH PITAMBER LALCHAND	907	65247	65247
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85	627	379	DANI SOMAN MAGAN	918	26915	26915
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86	628	380	DANI KANTI MAGAN	919	Dismissed at	
					adm. stage (710)	
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87	629	381	DANI HIRA MAGAN	920	10737	10737
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88	630	417	SHAH POONAM LALCHAND	956	30148	30148
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89	631	418	SHAH POONAM LALCHAND	957	72392	72392
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90	632	419	SHAH JAYANTILAL KODAR	958	35673	35673
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91	633	424	SHAH MANHAR HIRA	963	55215	55215
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92	634	426	SHAH MANHAR HIRA	965	12361	12361
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93	635	427	SHAH MANHAR .R			

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94	636	428	SHAH MANHAR HIRA	967	70328	70328
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95	637	429	BAMANIYA AMRAJI GALAJI	No.appeal filed by Govt		
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96	638	431	SHAH BHOGILAL MAGAN	969	31903	31903
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97	639	432	SHAH BHOGILAL MAGAN	970	25867	25867
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98	640	433	SHAH HARIVALLABH SHANKER	971	19399	19399
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2.The Irrigation Department of the appellant State of Gujarat planned to construct Vatrak Dam on the river Vatrak. Due to the planning of the construction of Dam over river Vatrak which passes through the district of Sabarkantha, a very huge area of lands in Malpur Taluka was likely to be submerged under the waters of the Dam. Pursuant to the said plan to construct the reservoir, the Land Acquisition Officer issued notification under

Section 4 (1) of the Act which came to be published in the Government gazette on July 16, 1981 declaring his intention for acquiring the lands of village Satarda, Tal. Malpur, Dist : Sabarkantha. By the said notification, lands and houses of village Satarda came to be acquired for the purpose of construction of reservoir of Vatrak Dam Project. After publication of Section 6 notification in the Government gazette dated November 25, 1982, the notices under Section 9 of the Act were issued to the persons interested whose lands and houses came to be acquired. After hearing the interested persons and considering the sale instances and the estimates prepared by the Executive Engineer with respect to the houses, the Deputy Collector and Land Acquisition Officer, Vatrak Project, at Modasa, declared his award on March 20, 1984 and fixed the compensation of the acquired land at the rate of Rs.2 per square meter. The Special Land Acquisition Officer assessed the building situated on the acquired land as per the estimates prepared by the Executive Engineer and awarded compensation as per those estimates.

3. The claimants of village Satarda whose lands and houses were acquired for the purpose of Vatrak Project filed applications under Section 18 of the Act and sought References to the District Court. The claimants prayed compensation of the acquired land at the rate of Rs.55 per square meter and compensation of the buildings at the rate ranging from Rs.700/= to Rs.1,200/= per square meter. The said cases were, therefore, referred to the District Court, Sabarkantha, at Himatnagar, which came to be numbered as Land Reference Cases Nos. 118/84 to 433/84. The said Reference Cases came to be transferred in the court of learned Assistant Judge, Sabarkantha, at Himatnagar. The Reference Court consolidated all the Land Reference Cases and evidence was recorded in L.A. Case No. 346/84, which was treated as main L.A. Case. After appreciating oral as well as documentary evidence produced on the record and the arguments advanced by the learned Advocates of the parties, the learned Assistant Judge by his common judgment and award, dated April 30, 1986, determined the market price of the acquired land of village Satarda at the rate of Rs.20 per square meter. The Reference Court divided the lands and houses which came to be acquired into three categories viz.

I R.C.C. structure.

II Bricks and cements having roof of country tiles or corrugated iron sheets.

III Bricks and mud.

The learned Assistant Judge awarded compensation of the ground floor of the houses of category 1 which were of

R.C.C. structure at the rate of Rs.350/= per square meter, for the 1st floor at the rate of Rs.150/= per square meter and for the 2nd floor at the rate of Rs.100/= per square meter. The learned Assistant Judge awarded compensation for the houses which were of category 2 which were having construction of bricks and cement at the rate of Rs.330/= per square meter for the ground floor and at the rate of Rs.70/= per square meter for the first floor. For the houses of category 3 which were constructed of bricks and mud, the learned Assistant Judge awarded compensation at the rate of Rs.275/= per square meter for the ground floor and Rs.68/= per square meter for the remaining floors. The learned Assistant Judge awarded compensation at the rate of Rs.50/= per square meter for the houses which were having shades which were constructed adjoining or in the front of the acquired house. The claimants of acquired lands in which foundations were laid were awarded compensation at the rate of Rs.30/= per square meter. The Reference Court also awarded 12 % increase under Section 23 (1-A), Solatium under Section 23 (2) and interest under Section 28 (2) of the Act to the claimants.

4. The claimants to justify the claim of compensation before the Reference Court examined as many as 27 witnesses. The claimants' witness No.1 Usmanbhai Gulamrasul Surti-Exh.9 deposed about the location of village Satarda. It is stated that village Aniyor is at a distance of 5 kms from Satarda. Village Satarda is second biggest town after Malpur which is a Taluka town. It is deposed that no sales of land or superstructure in village Satarda had taken place nearby the date of the notification of Section 4 (1) of the Act. The witness deposed that when Section 4 notification was issued, the prices of land of village site was Rs.55 per square meter. The witness deposed that in village Satarda, there were 40 shops, 3 factories, one rice mill, 2 private dispensaries and 1 Primary Health Centre which was the biggest in the whole Taluka. It is also deposed that there was 1 High School and 1 Library in village Satarda. The witness has also deposed that there was one Milk Cooperative Society and there were facilities of telephone in the village. It is stated that village Satarda was connected with all the villages and towns of Sabarkantha District and there was big S.T.Stand wherein 40 buses used to ply daily. This witness has also deposed that a crematorium was constructed wherein the contractor was paid Rs.600/= to Rs.625/= per square meter. It is deposed by this witness that the land for Aniyor Milk Cooperative Society was purchased at the rate of Rs.25 to Rs.30 per square meter. This witness has

deposed about other superstructure which existed and which were the subject matter of other Land Reference Cases. In the cross-examination this witness categorically denied that the population of Aniyor and Satarda was the same. He deposed that his house was constructed 15 years prior to the acquisition. He was not present when the Deputy Executive Engineer visited his house for the measurement. He voluntarily deposed that because of heavy rain fall in 1973-74, the houses of village Satarda had fallen and new houses were constructed thereafter.

5. Claimants' witness No.10 Bhikhabhai Becharbhai Panchal is a contractor by profession and his evidence appears at Exh.22. He is also claimant of Land Reference Case No.170 of 1984. In paragraph 8 of his deposition, he has stated that he had carried out construction of hutments of Vatrak Colony which was situated at a distance of 10 kilometers from village Satarda. It has come in his evidence that total area of construction of hutments was 240 square meters and he was paid Rs.187=50 per square meter for the construction of the hutments. During cross-examination, this witness has categorically stated that the construction of acquired houses was carried before 15 years from the date of the acquisition.

6. Panchal Bhurabhai Devkaranbhai was examined on behalf of the claimant at Exh.25. This witness had carried out the work of the construction of crematorium of village Satarda. He has stated that the cost of construction of crematorium was paid to him at the rate of Rs.800/= per square meter.

7. Vishnubhai Lakhabhai Panchal who had carried construction of one room of the school at Damor na Muvada is examined at Exh.35. He deposed that the measurement of the room which was constructed was 18 X 22 feet and he was paid Rs.20,000/= for the construction of the room. He deposed that Damorna Muvada is at a distance of 2 kilometers from village Satarda. This witness has also deposed about the houses which were the subject matter of the other Land Reference Cases. He deposed that the claimants were not paid compensation for the upper floor of their building. He emphatically deposed that no sale had taken place of land or building in village Satarda during the year 1976 to 1980. During the cross-examination, the witness denied that the Deputy Engineer of P.W.D. had measured the acquired houses in the presence of various claimants.

8. Jayantilal Shankarlal Shah who was Sarpanch of

village Satarda for 11 years i.e. from 1967 to 1978 is examined at Exh.40. He has deposed that village Satarda was having population of 3,000 people and was connected by road to Ahmedabad, Nadiad, Godhra, Dohad Madhya Pradesh , Modasa, Dhansura, Ubhran, Bayad and Aniyor. He also deposed that a crematorium of village Satarda was constructed in the year 1981. He deposed that a place of drinking water for animals was constructed in Damorna Muvada at the construction cost of Rs.625/= per square meter. He also deposed that in the year 1973, there was heavy rain fall of 150 inches in village Satarda and because of heavy rain fall, the village pond burst-out and 70 % of the houses of the village Satarda had collapsed, and therefore, in the year 1974, new houses came to be constructed in place of old houses. This witness also deposed that the acquiring body had not given compensation for the upper floor and the open land adjoining to the houses. He also deposed that the engineers of P.W.D. had not measured their houses in their presence. During cross-examination, the witness admitted that when the construction of crematorium was carried in village Satarda, he was not Sarpanch. He also admitted that the claimants had not produced evidence that there was electric fitting in the acquired houses. It has also come in the evidence of this witness during cross-examination that the land which was allotted to them after the acquisition was not suitable, and therefore, they had not accepted the allotment.

9. Hirabhai Jivabhai Prajapati is examined at Exh.47. He has deposed that his father was given a plot of land of 44 square yard in the year 1967 at the rate of Rs.7-50 per square yard. The witness produced Sanad of the allotment of the said land in favour of his father Jivabhai Jethabhai at Exh.48. Through the evidence of this witness, it is proved that the prices of the land in village Satarda in 1967 was Rs.7-50 per square yard. Ambabhai Shankarbhai Patel-Exh.62 is examined to prove the sale deed Exh.64 which was executed between Aniyor Milk Cooperative Society and his brother in the year 1978. Land admeasuring 50 X 50 square feet was sold at the consideration price of Rs.5,000/= on 31-5-1978 by the witness and his brother Dhulabhai Shankarbhai Patel. Abdurrehman Jamalabhai, the Chairman of Aniyor Cooperative Society is examined at Exh.66. He deposed that in the year 1978 the construction was carried out in the land admeasuring 40 X 40 square feet which was started in October 1978 and was completed in April 1981. The witness during his oral evidence produced account books of the Milk Cooperative Society. Shaileshbhai Janardan Desai who was Executive Engineer in Vatrak Project Canal

Division is examined at Exh.81. He deposed that the tenders for the construction of staff quarters of Vatrak Colony at Aniyor were published on 4-4-1981. He deposed that after 1980, there is a steep rise in the prices of cement, bricks, iron and sand.

10. The acquiring body examined Land Acquisition Officer Prahlad Joitaram Patel at Exh.99. He deposed that the claimants were allotted lands near the outskirts of village Satarda. He deposed that each agriculturist-claimant was allotted 3 gunthas land and non-agriculturist-claimant was allotted 1 1/2 gunthas land free of cost. During cross-examination, the witness deposed that the claimants had not led any evidence in support of their claim before him. He admitted that there were no sale instances of village Satarda round about the date of Section 4 notification. He admitted that he had adopted the assessment made by the Executive Engineer with regard to the superstructure which existed on the acquired lands. He deposed that he had not prepared Panchnama with regard to the prices of the superstructure built on the acquired lands. He admitted that some of the houses of village Satarda were having good construction. He admitted that he had not visited the acquired lands or superstructures before making the award.

11. Mahendra Krishnalal Gajab who was Executive Engineer at Dhansura during the period 23-9-1983 to 20-10-1983 is examined at Exh.100. He deposed that the assessment of the superstructure of village Satarda which were likely to be submerged was prepared by the Deputy Executive Engineer N.M.Rathod. He deposed that he had approved the report prepared by the Deputy Engineer. He deposed that the Junior Engineer visited the site and took measurements of the superstructure and after taking into consideration the type of construction, its doors, windows and the life of a house, The Deputy Engineer prepares a Panchnama. The witness deposed that thereafter, the depreciation of a house is decided after taking into consideration the age of a house. He deposed that the salvage value and depreciation is assessed as per the notification of the Government dated 1-7-1963. It is also deposed by the witness that Executive Engineer M.P.Shah had also approved the assessment prepared by Junior Engineer. He deposed that there were no houses in village Satarda which fall under "A" category. During cross-examination, the witness admitted that he had not called for the cost of material from the open market which prevailed in the year 1981-82. He admitted that day by day, cost of building material was increasing.

The witness deposed that it was not necessary to call for the cost of materials prevailing at the relevant period for fixing the Schedule of Rates. He admitted that he had not seen the superstructure of village Satarda. He also admitted that he had not verified what were the prices of the houses of village Satarda which were likely to be submerged. The witness deposed that no criteria was fixed by the P.W.D. for determining life of a house. However, he deposed that the life of a house is fixed after observing it outwardly.

12. Rameshchandra Madhumal Narsangani who is the Supervisor of Vatrak Project during the year 1981 is examined at Exh.108. He deposed that he along with Deputy Executive Engineer Mr. V.S.Patel had gone to village Satarda and prepared the panchnamas of the acquired houses. He deposed that they had taken the measurement of all the houses before preparing the panchnamas. During cross-examination, the witness admitted that in the panchnama, signatures of the owners of the houses were not obtained. He also admitted that in the panchnama the date and year were not mentioned. The witness also admitted that he himself had not taken the measurement of the acquired superstructures. He further admitted that in the panchnama of the acquired houses, the estimate value of the superstructure was not mentioned. The witness admitted that in preparing the estimates of the superstructure, they had not taken into consideration the price of land.

12.1. This witness though he is a Supervisor and had visited the acquired superstructures, is not a qualified person and he had not taken any part in the preparation of the assessment of the acquired houses. Therefore, his evidence only shows that he had visited the site along with other Junior Engineers. It is worth mentioning that in the panchnamas which were prepared at the time of visit of the superstructures the estimated cost of the superstructures was not stated. The engineers of P.W.Department had prepared the estimate on which reliance was placed by the Special Land Acquisition Officer were merely based on Schedule of Rates of the Government prevailing in the year 1981-82. The witnesses examined on behalf of the acquiring body have not stated that who had prepared the Schedule of Rates. It is a fact that the Schedule of Rates does not reflect the market value of the properties. Therefore, the Reference Court has not placed reliance on the estimates prepared by the Executive Engineer of the P.W.Department. Moreover, the Engineers who had prepared the estimate were not examined before the Reference Court. The

Reference Court had therefore, no alternative, but to take resort to the cost of in the year 1981 of the Milk Cooperative Society at Aniyor.

13. Learned Government Pleader Mr. P.G.Desai has taken us through the entire evidence on the record. It is submitted by the learned Government Pleader, Mr. P.G.Desai, that the Reference Court was not justified in awarding compensation for the lands and superstructure separately. It is the contention of the learned Government Pleader that the Land Acquisition Officer has relied on the estimate prepared by the Engineer of the Public Works Department who had visited the acquired lands and buildings and prepared estimate and the report of the department was based on the scientific method, and therefore, the Reference Court should not have awarded enhanced compensation for the superstructures. The learned Government Pleader has also submitted that the acquiring body had examined the witnesses in support of the estimate prepared with regard to the acquired superstructure and those estimates were prepared on the basis of SOR. It is the submission of the learned Government Pleader that the Reference Court has not considered the evidence of witnesses examined by the acquiring body. The learned Government Pleader submitted that the definition of 'land' includes superstructure existing on it and both the superstructure and the land is to be assessed as one unit. It is stressed that the award of the Reference Court is totally unjust, arbitrary and it is passed without any material before the Court. The learned Government Pleader has also contended that the claimants have not discharged their burden while leading evidence before the Reference Court with regard to valuation of buildings and therefore, the compensation awarded by the Reference Court deserves to be set aside and the appeals require to be allowed.

14. Learned counsel Mr. H.B.Shah for the claimants submitted that lands and superstructure thereon of the claimants came to be submerged under the water of river Vatrak because of construction of Vatrak dam and reservoir, and the claimants have lost their houses. It is contended that there were floods in the year 1973 and most of the houses of village Satarda had collapsed and new houses came to be constructed in the year 1973-74. It is submitted by the learned counsel for the claimants that the estimates prepared by the Engineer of the PWD were mainly prepared relying upon the SOR. It is contended that in the oral evidence, Mr. Gajab, Executive Engineer, admitted that in fixing SOR, rates of different articles were not called, and therefore,

estimates prepared by PWD Engineer were arbitrary and on the lower side and the Reference Court was justified in enhancing compensation of lands and superstructures in favour of the claimants. It is further submitted by the learned counsel for the claimants that the Land Acquisition Officer, during his oral evidence, admitted that he had not visited the acquired lands and superstructure and had mainly relied upon the estimate prepared by the Engineer of PWD, which is contrary to the principles of assessment of compensation of lands and buildings. It is contended by the learned counsel for the claimants that the estimates prepared by the Engineers of P.W.D. were arbitrary as only based on S.O.R. and that the Engineers had taken into accounts the rates and types of construction of some superstructures which were of R.C.C. structure. The learned counsel for the claimants also urged that the evidence led on behalf of the acquiring body was, rightly, rejected by the Reference Court on the ground that the Executive Engineer, who had visited the acquired superstructure and who had prepared estimates, was not examined and the Executive Engineer, who was examined, had no personal knowledge with regard to superstructure existing on the acquired land. The learned counsel for the claimants submitted that, as the evidence of the acquiring body was not reliable, the Reference Court was justified in placing reliance on the cost of construction of Malpur Cooperative Bank Limited of Malpur and of Milk Cooperative Society at village Aniyor.

15. In the appeals filed by the claimants for enhancement of compensation, the learned counsel for the claimants submitted that the price of the lands in question at the relevant time in the year 1981 was prevailing at the rate of Rs.55/- per sq. mtr. and the Reference Court ought to have awarded compensation of the lands acquired at the rate of Rs.55/- per sq. mtr. It is submitted by the learned counsel for the claimants that the cost of construction of building of Malpur Cooperative Bank was at the rate of Rs.2069=54 per sq. mtr. whereas the cost of construction of Milk Cooperative Society at village Aniyor was at the rate of Rs.609=81 ps. per sq. mtr. The learned counsel for the claimants also urged that the oral evidence of witness Shailesh Kumar (Executive Engineer) at Exh.81, shows that staff quarters for the Vatrak Dam were constructed nearby village Satarda and the building contractor was given a rise by 54 % and cost of construction of those quarters came to Rs.883/= per sq.mtr. in the year 1981 and therefore, the claimants should be awarded at least 30 % more compensation in respect of all the three

categories of the properties under acquisition. According to the submission of the learned counsel for the claimants, the claimants had lost their own homes and hearth and they have given great sacrifice for public cause and therefore, also the claimants should be adequately compensated for the acquired lands and superstructures.

16. The learned Government Pleader, in reply to the arguments advanced on behalf of the claimants for enhancement of compensation, submitted that the claimants, before the Reference Court, had not led any evidence in support of their claims, and therefore, there is no merit in their appeals and the same deserve to be dismissed.

17. The Apex Court in catena of decisions has laid down the principle that in determining the compensation payable in respect of land with buildings, compensation cannot be determined by assessing the value of the land and the " break-up value " of the buildings separately. The land and the building constitute one unit and the value of the entire unit must be determined with all its advantages and its potentialities. (See A.I.R. 1968 Supreme Court, page 1201 The State of Kerala vs. P.P. Hassan Koya ; A.I.R. 1988, Supreme Court, page 943 Administrator Genl. of West Bengal vs. Collector, Varanasi). In (1997) 2 S.C.C.,page 161 Ratankumar Tandan and others v. The State of U.P. the Apex Court has ruled that when land and building are acquired by notification, the claimant is not entitled to separate valuation of the building and the land. They are entitled to compensation on either of the two methods, but not both. Learned Government pleader relying on the above decisions has urged that the Reference Court has erred in separately valuing the lands and buildings and awarding compensation for both. Learned counsel for the claimants could not dispute the settled legal position that in case of acquisition of superstructure only the value of superstructure has to be arrived at and the land below superstructure cannot be separately valued. Therefore, in our opinion, the Reference Court has erred in separately valuing the land and superstructure. Therefore the argument of learned Government Pleader that there cannot be separate assessment for land and building deserves to be accepted.

18. The next submission of the learned Government Pleader is that in absence of evidence, the Reference Court has awarded compensation for the superstructure at Rs.350/= per square meters to the claimants. In our

opinion, the argument of learned Government Pleader is meritless for the reasons given hereunder.

19. The witnesses of the claimants have in extent so deposed about the situation of village Satarda. Village Satarda was having a population of 3,000 people. The village was connected by road to all the important cities of the State of Gujarat. There was also telephone facilities and a Primary Health Centre. The claimants' witnesses have clearly deposed that their houses were having all facilities like kitchen, lavatory, bath room, electric fitting and water connection. This evidence has remained unshaken during the cross-examination of these witnesses. Village Aniyor was situated at a distance of 5 kilometers from village Satarda. The claimants had proved that the construction of Milk Cooperative Society at Aniyor was carried out in the year 1981 and the cost of construction was determined at Rs.609=80 per square meter. The evidence of witness Shaileshkumar- Exh.81 who was the Executive Engineer also shows that for the employees of Vatrak Dam, staff quarters were constructed in the nearby place of village Satarda and the contractor who carried out the construction work of the staff quarters was given rise of 54 % over and above the tender agreement and the cost of construction of those staff-quarters came to Rs.883/= per square meter in the year 1981 even though the Government had supplied steel and cement at controlled prices. It is an admitted fact that no sale instances had taken place in village Satarda after 1967 till the date of acquisition. It is also equally an admitted fact that no construction work was carried out in village Satarda nearby the date of the acquisition.

20. The Reference Court has awarded Rs.30 per square meter towards the compensation of acquired land on which the foundations were laid. The Reference Court mainly relied on Exh.103 which was the contract of constructing the hutment. In our opinion, the Reference Court was fully justified in awarding Rs.30/= per square meter for the acquired land on which foundations were laid. When the open land was assessed at the rate of Rs.20/= per square meter, we do not find any reason to interfere with the findings of the Reference Court in awarding compensation at the rate of Rs.30/= per square meter for the acquired land on which foundation was laid.

21. After appreciating the oral evidence of the claimants' witnesses, the Reference Court had divided the acquired superstructure in 3 categories namely category 1- houses which were having RCC construction. Category

2-houses constructed of bricks and cement having roofs of country tiles or corrugated iron sheets and category 3 houses built of bricks and mud.

22. Both the learned counsel for the acquiring body as well as claimants have taken us through the evidence adduced on the record of this case by both the sides. In our opinion, the Reference Court had not committed any error in dividing the superstructure in 3 categories as mentioned above. The claimants' witnesses had described their houses and superstructure in extent so in their oral evidence which was not challenged before the Reference Court. In our opinion, no error is committed by the Reference Court in dividing the acquired superstructure in 3 categories, and therefore, the findings of the Reference Court deserves to be upheld.

23. Where market value of a building constructed is to be assessed, one method to be adopted for the expenditure likely to be incurred for constructing similar house reduced by depreciation. The property in question should ordinarily be valued as a whole composite unit. In the present case, the claimants have lost their own homes and hearths. Because of the acquisition, the claimants had to shift to another village which was named as New Satarda village. The claimants must have built their new houses on the lands which were allotted to them in New Satarda village. The houses of the claimants were dearer as they were residing in those houses since many years. Therefore, the claimants should be adequately compensated for the loss of their houses. It has become abundantly clear that because of heavy rain and floods in the year 1973-74, most of the houses of the village Satarda had collapsed and new houses came to be constructed and the said fact is not challenged before us. The method which can generally resorted to in determining the value of land and building especially those used for business purpose would be a method of capitalization and of return actually received or might reasonably be received from the land and building. In the present case, all the acquired superstructure buildings were not used for commercial purpose, and therefore, there is no evidence with regard to annual income derived from those buildings. No sale had taken place at village Satarda since so many years. The Reference Court has therefore, no alternative but to rely on the construction work carried on in the nearby villages.

24. The building of Milk Cooperative Society at Aniyor was constructed in the year 1980-81. The accounts

for cost of construction were produced at Exh.66, which shows that there was construction of 144 square yard and the total cost of construction came to Rs.87,784=94 and the cost per square meter came to Rs.609=81.

25. Staff quarters for the employees of Vatrak Colony was constructed at village Aniyor. Witness Shaileshkumar Janardan Desai Exh.81 has deposed that the total cost of construction was Rs.2,13,360=09, but due to escalation of prices 54 % rise of total cost of construction was sanctioned. The map of the construction was produced at Exh.82 which shows that there was construction of 385 square meters and the cost of construction per square meter came to Rs.883/=. These staff quarters came to be constructed in the year 1981. The building of Malpur Cooperative Bank was constructed during the period of the acquisition of the lands and superstructures of the present case. The construction of the building of the Bank is proved by the witnesses Navnitlal Muljibhai, Abdulbhai Abdullatif. The cost of construction of the building of the Bank at Malpur came to Rs.2069=54 per square meter. The Reference Court after giving deduction of the profit of the contractor awarded compensation of the acquired superstructure at Rs.350/= per square meter for the ground floor of the superstructure which were having RCC construction. In our opinion, the award of compensation at Rs.350/= per square meter for the ground floor of the superstructure which were of RCC construction cannot be called on higher side. The Reference Court had taken into consideration the cost of construction of the buildings of the adjoining villages and had fixed the market prices. As there was no satisfactory evidence produced by the claimants as well as the acquiring body, the Reference Court had no alternative but to take help of the construction which were carried in the nearby villages. Valuation of immovable property is not an exact science. It is not a mere algebraic problem. It abounds in uncertainties and no exact reasons for the conclusions arrived at is possible on all occasions. Some room has to be allowed for conjecture through the Court should be reluctant to venture too far in this direction. In the absence of definite material the Court is sometimes left to its own resources. Therefore, in our opinion, the Reference Court was justified in awarding the compensation at the rate of Rs.350/= per square meter for the ground floor area on the superstructure which were having RCC construction and Rs.150/= for the first floor area and Rs.100/= for the second floor area. We do not find any reason to interfere with these findings and they are hereby upheld.

26. The Reference Court thereafter had determined the compensation for the houses which were built of bricks and cement and which were having roofs of country tiles or corrugated iron sheets. In determining the compensation of these houses, the Reference Court relied on the evidence of Gamirbhai Kalabhai Exh.65. The Taluka Panchayat had constructed one room in the school at Damorna Muvada in the year 1981 and total cost of construction came to Rs.19,915/=. The accounts of the cost of construction was produced at Exh.36 and the map of the construction was produced at Exh.37. The cost of construction for the said room came to Rs.957=45 per square meter. The Reference Court also relied on the construction work of crematorium of village Satarda in the year 1980. Tender of the said construction was produced at Exh.28. Amount of Rs.38,537/= was paid for the said construction which was carried out in the area 13-70 square meter. The cost of construction came to Rs.948=58 per square meter. The Reference Court after taking into consideration the above two construction of 1 room of school at Damorna Muvada and another of crematorium at village Satarda, determined the compensation of the superstructure which was constructed of bricks and cement and which was having roofs of country tiles or corrugated iron sheets at the rate of Rs.330/= per square meter for the ground floor and at the rate of Rs.70/= per square meter for the first floor. We have also taken into consideration the oral as well as documentary evidence with regard to the construction of one room of the school at Damorna Muvada and the construction of crematorium at village Satarda and are of the view that the award of the Reference Court with regard to the compensation for the superstructure which were having construction of bricks and cement and having roofs of country tiles or corrugated iron sheets cannot be said to be on higher side. The Reference Court has awarded just and adequate compensation to the claimants for the said superstructures. Therefore, the finding of the Reference Court with regard to awarding compensation for the houses of category two deserves to be upheld.

27. Though the claimants had claimed at the rate of Rs.700/= per square meter for the houses which were constructed of bricks and mud, the Reference Court after taking into consideration the prevailing cost of construction of such houses, determined the compensation at the rate of Rs.275/= per square meter for the ground floors of the houses which were built of bricks and mud and at the rate of Rs.68/= per square meter for such

houses which having mezzanine floors.

28. The Reference Court had come to the conclusion that on the date of acquisition the houses were 15 to 17 years old as they were constructed during the year 1973 to 1975. As the depreciation for first 5 years is not to be deducted, the Reference Court had deducted depreciation of the rest of 10 years and had deducted 10 % from the cost of construction of the acquired superstructure. As no depreciation is to be deducted for the houses having made of bricks and mud as per the circular dated 25-7-1979, the Reference Court was justified in not deducting depreciation from the amount of compensation of the houses of category three. As discussed in the foregoing paragraphs, the award of the Reference Court allowing separate compensation for the land below the superstructure suffers from a patent error of law. Once the superstructure is evaluated, no question of evaluating the land below the superstructure remains for consideration. Therefore, the award of the Reference Court awarding compensation to the claimants at the rate of Rs.20/= per square meter for the land below the superstructure deserves to be set aside. However, it is clarified that the claimants shall be entitled to compensation for the acquired lands which were open and adjacent to their homes at the rate of Rs.20/= per sq. meter.

29. It is the submission of the learned Government Pleader that since the land was separately evaluated, the building cannot be separately assessed and its compensation should be the value of debris is devoid of any merit. The Apex Court in the case of Ratankumar Tandan Tandan and others (Supra) has held that the claimants are entitled to compensation either of the two methods, but not the both. In the present case, the claimants have lost their homes because of the acquisition, therefore, the claimants are entitled to claim compensation for the superstructure. The claimants are allotted free hold lands at village New Satarda. The allotment of the lands does not mean that they have not to incur expenses of their new houses. Therefore, in our opinion, the claimants are entitled to claim compensation for the acquisition of their houses. However, it is clarified that the claimants cannot claim compensation for the land below the superstructure. The claim of the lands below the superstructure also deserves to be rejected because the claimants are already allotted free hold land in the new village Satarda. In our opinion, if the superstructures are valued, then there cannot be separate valuation for the land below the superstructure.

30. The Reference Court has awarded Rs.100 to all the claimants towards the reasonable compensation as the claimants were compelled to change their residence because of the acquisition of their houses. In our opinion, the Reference Court was justified in awarding compensation to the claimants under Section 23 (1) (Clause 5thly). Therefore, the findings of the Reference Court awarding Rs.100/= to all the claimants as reasonable expenses for the change of their place of residence is eminently just and proper and deserves to be upheld.

31. The submission of the learned Government Pleader that the award of the Reference Court with regard to the compensation of the superstructure is based on no evidence, in our opinion, is meritless and deserves to be rejected. The claimants' witnesses Exh.9, 10, 13, 22, 35, 40, 43, 62, 65, 66, 81, 84, 89 and 93 have emphatically deposed about the measurements, amenities and facilities attached to their houses under acquisition. The evidence of above witnesses had remained unchallenged. It is true that the claimants had not led documentary evidence in support of their claim. The claimants had not examined the expert with regard to the assessment of their superstructures, but it would have been futile to remand the case at this stage because the houses which were the subject matter of the acquisition were already submerged under the waters of river Vatrak. This is not a case of no evidence. The claimants had led oral evidence in support of their claims for compensation. They had also led evidence of the construction work in different nearby villages. It cannot be said that the award of the Reference Court is based on no evidence. After appreciating oral as well as documentary evidence, the Reference Court had relied on the construction work of nearby villages and awarded just compensation to the claimants. Therefore, in our opinion, it cannot be said that the award of the Reference Court is based on no evidence.

32. In the Cross Appeals filed by the claimants for enhancement of compensation, it is submitted by the learned counsel for the claimants that the compensation awarded to the claimants is inadequate and unjust having regard to the market value of the acquired houses. It is submitted that the amount of compensation awarded by the Reference Court requires to be raised atleast 30 % in respect of the houses of all the three categories under acquisition. In our opinion, the submission of the learned counsel for the claimants is meritless and

deserves to be rejected. As observed earlier, the Reference Court had determined the market price of the acquired houses after taking into consideration the cost of construction as prevailing in the year 1981 by relying upon the cost of the construction of the building of the Milk Cooperative Society at Aniyor and the cost of the construction of building of Malpur Cooperative Bank, Malpur. The Reference Court had also taken into consideration the cost of construction of the staff quarters of Vatrak dam. After taking into consideration the cost of construction of all the above three buildings, the Reference Court had deducted the profit of the contractor and determined the market price of the acquired houses. The claimants had not led any evidence with regard to the cost of construction of their individual houses. In absence of such definite evidence, the Reference Court by relying upon the cost of the construction of the properties situated in the neighborhood had tried its best to determine the market price of the acquired houses for awarding just and fair compensation to the claimants.

33. The submission of the learned counsel for the claimants that if the land and buildings are evaluated as one unit, the value of the land must enter the consideration of the Court while determining the market price. The submission of the learned counsel is devoid of any merit in view of the settled legal position as propounded by the Apex Court in the case of Ratankumar Tandan and others v. The State U.P. (Supra). If the compensation is determined for the acquired houses, it includes therein the cost of the open land. There is no material on the basis of which it can be held that the determination of the assessment of the compensation for the acquired houses by the Reference Court does not reflect the true market value of the houses.

34. The Reference Court had awarded an increase of 12 % on the market value of the compensation under Section 23 (1-A) of the Act for the period commencing on and from the date of the publication of the notification under Section 4 sub Section (1) to the date of the award of the Collector or the date of taking possession of the land which in our opinion does not requires any interference. The awarding of 30 % solatium to the claimants under Section 23 (2) of the Act by the Reference Court is modified to the extent that the claimants shall not be entitled to solatium on additional amount payable under Section 23 (1-A) of the Act in view of the principles laid down by the Supreme Court in the case of Prem Nath Kapur and another vs. National Fertilizers Corporation

of India Limited and others, reported in (1996) 2 Supreme Court Cases 71. The Apex Court has in the above decision observed as under :

"Section 34 or Section 28, as the case

may be, fastens liability to pay interest only on amount of compensation or such excess amount of compensation or part thereof determined under Section 23 (1). In other words, by virtue of the language of Section 23 (2), viz. " in addition to the market value ", as provided in Section 23 (1), solatium becomes payable. Compensation under Section 23 (1), by necessary implication, excludes the liability to pay interest on solatium. Equally, no solatium is payable on additional amount payable under Section 23 (1-A). So too, no interest is payable on additional amount under Section 23 (1-A) on other components except on compensation or excess compensation or part thereof determined under Section 23 (1) over and above the award under Section 11, by Civil Court under Section 26 or on appeal under Section 54, respectively."

In view of the principles laid down by the Apex Court in the case of Prem Nath Kapur (Supra), the claimants are not entitled to claim solatium on the additional amount payable under Section 23 (1-A) of the Act. In that view of the matter, the award of the Reference Court, to that extent, requires to be modified.

The award of the Reference Court with regard to interest under Section 28 of the Act requires to be modified in view of the judgment of the Apex Court in the case of Tehri Hydro Development Corporation vs. S.P.Singh, reported in (1997) 1 Supreme Court Cases 249. Question came up for consideration of the Supreme Court is as to whether the High Court was justified in awarding interest to the claimants on the amount of solatium as well as on the additional amount under Section 23 (1-A) of the Act. The Supreme Court, after considering the relevant provisions of Section 23 (1-A) and Section 28 of the Act, held that the claimants are not entitled to get interest on solatium and additional amount under Section 23 (1-A) of the Act. The award of the Reference Court is, therefore, requires to be modified to the extent that the claimants are not entitled to interest on the amount of solatium as well as on the additional amount under Section 23 (1-A) of the Act. In view of the above clarifications, the award of the Reference Court be modified to the extent indicated above.

35. As a result of the foregoing discussion, the appeals by the State of Gujarat are partly allowed and the appeals filed by the claimants for enhancement of compensation are dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs in both the Appeals i.e. the Appeals filed by the State of Gujarat and Cross Appeals filed by the claimants.

* * * *

Mithabhai.